

No. ID/FD/271/82/5198.—Whereas the Governor of Haryana is of the opinion that an industrial dispute exists between the workman Shri Partap Singh and the management of M/s Eicher Goodearth Ltd., 59, Industrial Township, Faridabad, regarding the matter hereinafter appearing ;

And whereas the Governor of Haryana considers it desirable to refer the dispute for adjudication ;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (i) of section 10 of Industrial Disputes Act, 1947, the Governor of Haryana hereby refers to the Industrial Tribunal, Haryana, Faridabad, constituted under section 7-A of the said Act, the matter specified below being either matter in dispute or matter relevant to or connected with the dispute as between the said management and the workman for adjudication:—

Whether the termination of services of Shri Partap Singh was justified and in order ? If not, to what relief is he entitled ?

V. S. CHAUDHRI,

Deputy Secretary to Government, Haryana,
Labour Department.

LABOUR DEPARTMENT

The 17th December, 1982

No. 9(182-6Lab./11943.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Nibro Ltd., Gurgaon.—

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD

Reference No. 7 of 1981

between

SHRI MAHAVIR TYAGI, WORKMAN AND THE RESPONDENT-MANAGEMENT OF
M/S NIBRO LIMITED, GURGAON

Shri S. K. Goswami, for the workman.

Shri M.P. Gupta, for the respondent-management.

AWARD

This reference No. 7 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN 96 80/65243, dated 29th December, 1980 under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between Shri Mahavir Tyagi, workman and the respondent-management of M/s Nibro Limited, Gurgaon. The terms of the reference was:—

Whether the termination of services of Shri Mahavir Tyagi was justified and in order ? If not, to what relief is he entitled ?

The notices were issued to the parties on receiving this reference order. The parties appeared and filed their pleadings. The case of the workman according to demand notice and rejoinder is that the workman was appointed as fitter on 10th October, 1977. The applicant was terminated by way of punishment without holding any legal valid and proper enquiry on 31st July, 1980 which is against the principles of natural justice. The claimant was the President of the factory union and the respondent terminated the service of the workman with *mala fide* intention and no approval was sought from the Industrial Tribunal in this regard. So the termination is illegal and the workman be reinstated with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workman has stated before this court that the demand notice be treated as claim statement. Since the workman has not submitted any claim statement, demand notice cannot be treated as part of the claim. The workman was appointed from 10th October, 1977 as a fitter and was discharged from the service,—vide management letter dated 31st July, 1980 by way of punishment after holding an enquiry. Prior to the discharge, the workman was put under suspension from 26th November, 1979 and a regular charge-sheet was given and domestic enquiry was held as per the provisions of the certified standing order of the company. The services of the workman were discharged from 31st July, 1980 after a valid enquiry.

The respondent also contended that if this court come to this conclusion that the enquiry is not properly held, the respondent-management may please be given an opportunity to lead evidence before this Court. The workman is earning much more than what he was getting from the respondent-management as the workman is appearing as an authorised representative in various cases before the various authorities. Therefore the workman is not entitled to reinstatement with back wages etc. and the reference be dismissed.

On the pleadings of the parties, following issues were framed :—

- (1) Whether the fair and proper enquiry was held by the respondent ? If so, to what effect ? (O. P. M.)
- (2) Whether the termination of services of the workman is proper, justified and in order ? If so, to what relief is he entitled ? (O. P. M.)
- (3) Relief.

Issue No. 1 was ordered to be treated as preliminary issue and decided first. My findings on the issue is as under, in which the enquiry was vitiated and ordered were communicated.—*vide* my order dated 1st September, 1982.

Issue No. 1 :

The representative of the respondent argued on this issue that as stated by Shri R. S. Kandhari, Manager of the respondent, the witness was appointed on 21st January, 1980 as Manager. Before that he was Personnel Officer. He further stated that the respondent terminated the services of Shri Mahavir Tyagi. Shri D. A. Phillips was the Works Manager of the respondent factory. Shri Surjeet Arora worked under his supervision. Shri R. K. Sharma was the Engg. and Works Manager. He further stated that he has seen the above officers reading and writing and identified their signatures. Ex. M-1 to M-4 bears the signatures of Shri Surjeet Arora, Ex. M-5 and M-6 bears the signature of Shri R. K. Sharma, which he recognise and Ex. M-7 to M-11 bears the signature of Shri Jhajharia and Ex. M-12 bears the signature of Shri Surjeet Arora which he recognises. Ex. M-13 and M-14 bears the signatures of Shri D. A. Phillips. Ex. M-15 is enquiry proceedings conducted by Shri Phillips and M-16 is findings of enquiry given by the enquiry officer Shri Phillips. Ex. M-19 bears the signatures of the claimant and M-20 is the complaint given by Shri Kharku. He further stated that Ex. M-22 and 23 bears his signature. He further argued that the workman was charged on the serious mis-conduct of sleeping while on duty. The enquiry officer was appointed to conduct the enquiry and the workman was suspended. The enquiry officer gave all opportunities to defend his case. The workman appeared in the enquiry, and led his defence. After the enquiry the enquiry officer submitted his report in which he was found guilty of the charges. On the report of the enquiry officer the services of the workman were discharged on 31st July, 1980. He further stated that the workman was drawing Rs. 394 P. M. and produced wage slip in this respect which is Ex. W. A. He further stated that the respondent also sent intimation to Shri Mahavir Tyagi regarding appointment of Shri D. A. Phillips as enquiry officer in place of Shri A. S. Bedi. Before Shri A. S. Bedi, Shri Surjeet Arora was the enquiry officer on which the workman raised an objection. On the objection of the workman Shri A. D. Bedi was appointed as enquiry officer. In this way every opportunity was given to the workman and when the charges were proved against him the services were discharged by the respondent. So the workman is not entitled to any relief, and the reference may be dismissed.

The representative of the workman argued that the complainant Shri Kharku, on which report the chargesheet was framed, appeared in this Court as W.W. 1 and stated that the affidavit, dated 19th August, 1980 is signed by him which is Ex. W. 1 in which it is stated that he was on duty on 20th November, 1979. On that day the respondent got a false complaint from him against the claimant Shri Mahavir Tyagi under pressure and threat. He further stated that he has not seen the claimant sleeping at the duty time. He further stated that Shri P. R. Yadav identified him and Tehsildar attested the affidavit. He further argued that Shri P. R. Yadav, advocate also appeared as W.W. 2 who has stated that he has identified Shri Kharku on the affidavit brought by him on 19th August, 1980 and got attested by the Executive Magistrate. He further argued that Shri Basant Kumar appeared as W.W. 3, who has stated that he is working with the respondent for the last 5½ years. He appeared as witness in the enquiry and the charges levelled against the claimant were wrong. He further stated that on 20th November, 1979 at about 2½ a.m. he went to the claimant regarding some machine at that time he was opening some shaft. The claimant was not given full opportunity to cross-examine the witnesses of the respondent. He further stated that Shri Mahavir Tyagi, claimant was the President of their union, and used to raise demands on behalf of the workers and produced Ex. W. 2 got settled by the claimant. He further stated that an employee of the respondent Shri Chhaterdhari appeared as W.W. 4, who has stated that there exist union in the factory in which Shri Mahavir Tyagi was the President of the Union. He further stated that he was also member of the union and given the authority letter to settle the demand on his behalf to the claimant. He further argued that the workman summoned the Clerk of Labour

Office, Gurgaon as W.W. 5, who has stated that he has brought the summoned record. On 16th June, 1979 the workers of the respondent gave a general demand notice in which Shri Mahavir Tyagi was shown as President. The representative of the workman further argued that the workman appeared as W.W. 6 and stated before the court that he was appointed on 10th October, 1977 and confirmed on 10th October, 1978 and received letter Ex. W.W. 6-1. He further stated that there exist union in the factory which was affiliated to AITUC and he was the president of that union. Being a president he was raising the demand on behalf of the workers and gave general demand notice, dated 16th June, 1979 which was referred to Tribunal on which the respondent started to harass the claimant and management to prepare a false chargesheet that I was sleeping at the time of duty. He further stated that he was not sleeping and replied the chargesheet. The respondent suspended him on 26th November, 1979 and the enquiry was started by Shri Surjeet Arora, who issued him chargesheet. The enquiry officer examined three witnesses of the respondent but the claimant was not allowed to cross-examine the witnesses produced by the respondent. He also demanded the facilities to be represented by his representative which was not allowed. The enquiry officer closed the evidence of the respondent after recording the evidence of the respondent and fixed the case for evidence of the workman and showed his inability to conduct the enquiry. After that Shri A. S. Bedi was appointed as enquiry officer, but he did not conduct the enquiry then Shri D.A. Phillips was appointed as enquiry officer who was previously works manager of the company. Shri D.A. Phillips the enquiry officer started conducting the enquiry afresh on which the claimant objected and asked the enquiry officer to record the evidence of the workman. But the enquiry officer did not care for this and like others he also not allowed to represent by some one. The workman was not given any show cause notice nor he was given any personal hearing. He further argued that the workman was not given the findings of enquiry. The respondent again issued the charge-sheet containing same charge but this charge-sheet was signed by Shri A. K. Jhajaria, and reply was called. He further argued that the respondent did not produce the enquiry officer before this court to prove the enquiry and the workman was not given chance to cross-examine the enquiry officer, without which the enquiry cannot be held good in the eye of law. The workman was not given any facility demanded by him. So the enquiry was not conducted in accordance with law and may be vitiated.

After hearing the arguments and going through the enquiry file I am of the view that arguments put forward by the representative of the workman has some weight. The respondent should have produced the enquiry officer to prove the enquiry which the respondent has not done, without which the enquiry is not proper. The workman produced as well as six witnesses in which three are the employee of the respondent who stated before this court that he was president of the union and used to raise the demands on their behalf and the charges levelled against him are false. This all shows that being a President of the Union, the workman became eye sore of the union and they went to victimise the workman, otherwise the charges levelled against him are not serious. The management can warn the workman on this act or can give the punishment lesser than dismissal. So I hold that the enquiry was not conducted in accordance with the law and not proved before this court. So I vitiate the enquiry.

Issue No. 2: After deciding the preliminary issue in favour of workman, the parties were given the chance to lead their evidence on the termination issue as well as on the enquiry. The parties given two chances for their evidence. On October 1, 1982 both the parties made a statement in this court their evidence are the same as produced earlier and they do not want to lead any evidence on this issue. When the enquiry conducted by the respondent was vitiated by the court and the parties were given the opportunity to defend their case but the respondent failed to prove the guilt before me. So I hold that the workman was terminated on the false charge as he was President of the Union. In these circumstances the termination of the workman is not proper and in order and the workman is entitled for his reinstatement with full back wages and continuity of service.

This be read in answer to this reference.

HARI SINGH KAUSHIK,

Dated the 17th November, 1982.

Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 2435, dated 17th November, 1982

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana, Faridabad.